

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

UNITED STATES OF AMERICA	:	CRIMINAL NO. 1-02-010
	:	
	:	(JUDGE DLOTT)
v.	:	
	:	<u>UNITED STATES' RESPONSE IN</u>
	:	<u>OPPOSITION TO DEFENDANT'S</u>
	:	<u>MOTION FOR REDUCTION OF</u>
GERALD HENDRIX	:	<u>SENTENCE</u>

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In Defendant Gerald Hendrix's Motion, he requests that this Court give retroactive effect to 18 U.S.C. § 3582 and thereby reduce his current sentence from 120 to 100 months. For the reasons set forth below, this Court must deny the defendant's motion.

MEMORANDUM

Pursuant to 18 U.S.C. § 3582, a court may reduce a defendant's imprisonment sentence only in a narrow line of cases. Those cases include matters in which the Sentencing Commission amends the guidelines and the Commission makes the amendment retroactive. See 18 U.S.C. § 3582(c)(2); see also United States v. Dullen, 15 F.3d 68, 69-70 (6th Cir. 1994). We acknowledge United States Sentencing Guideline Appendix C Amendment 706 in which the Sentencing Commission amended the Sentencing Guidelines to reduce offense levels pertaining to cases involving cocaine base ("crack"). See U.S.S.G. App. C, Amendment 706 (effective

November 1, 2007). However, the Sentencing Commission did not include that Amendment in the list of retroactive amendments in United States Sentencing Guidelines § 1B1.10(d). See U.S.S.G. App. C, Amendment 710 (effective November 1, 2007).

Although the Sentencing Commission is considering the retroactivity of Amendment 706, a decision has not yet been made. Accordingly, Hendrix's claim that his sentence must be reduced pursuant to § 3582 must fail at this time.

CONCLUSION

Accordingly, for the reasons stated above, we respectfully request this Court to deny the defendant's motion to reduce his sentence.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served this
21st day of November, 2007, by regular U.S. Mail on Gerald
Hendrix, Inmate No. 03511-061, P.O. Box 10, Lisbon, Ohio 44432.

s/Kenneth L. Parker
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